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Historical Origins of International Criminal Law: Volume 4

Morten Bergsmo, CHEAH Wui Ling, SONG Tianying and YI Ping (editors)

E-Offprint:

Mareike Schomerus, "International Criminal Law in Peace Processes: The Case of the International Criminal Court and the Lord's Resistance Army", in Morten Bergsmo, CHEAH Wui Ling, SONG Tianying and YI Ping (editors), *Historical Origins of International Criminal Law: Volume 4*, Torkel Opsahl Academic EPublisher, Brussels.

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ISBN 978-82-8348-017-7 (print) and 978-82-8348-016-0 (e-book)

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International Criminal Law in Peace Processes: The Case of the International Criminal Court and the Lord's Resistance Army

Mareike Schomerus*

6.1. Introduction

The year 2005 was momentous for international criminal justice. The newly established International Criminal Court ('ICC') issued its first arrest warrants for five commanders of the Ugandan rebel group, the Lord's Resistance Army ('LRA'). One of the five names listed was that of Vincent Otti, second in command to the LRA leader, Joseph Kony. When Otti found out about the arrest warrant issued against him, he had very clear expectations of what that meant: "I know that they take me to the ICC and then they will hang me", he said.[1] Having spent 20 years in the bush to fight as a rebel, he was now facing what he believed was certain execution in Europe. He added that he did not want to be executed far away from his home, the town of Atiak in northern Uganda. This would not be a fitting end to the LRA's fight against President Yoweri Museveni and the Government of Uganda, which had started in 1986. A fitting end would be to either defeat the government militarily or to successfully negotiate peace with it.

In July 2006, a few months after Otti said this, the LRA did indeed enter peace negotiations with the Government of Uganda. These came to be known as the Juba peace talks, named after South Sudan's capital in which they were held. In December 2008 the talks came to an abrupt end when the Ugandan army dropped bombs on the LRA camp after their re-

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1 Author telephone interview, 7 November 2005.

peated refusals to finalise an agreement.[2] Otti did not live to see these developments. He was executed – but not, as he had expected, by the ICC in The Hague. Otti was shot dead on the orders of his commander-in-chief, Kony.

Just as Otti's understanding of what to expect from international criminal justice had been a bit murky, the twists and turns of the peace talks between the Government of Uganda and the LRA had become a lot more complicated than anyone had expected, creating internal confusion within the LRA and sparking heated debate – with equal amounts of confusion – elsewhere. The ICC's first-ever arrest warrants against five LRA commanders, coupled with the fact that the Ugandan case was also the ICC's first-ever state referral, had added a new and unexpected dimension to an already complex conflict. It had also marked the beginning of a new era in both contemporary peacemaking and international criminal justice.

Peacemaking and international criminal justice procedures have had a rocky co-existence since the International Conference for the former Yugoslavia and the launching of the International Criminal Tribunal for the former Yugoslavia ('ICTY') through a United Nations Security Council vote in May 1993. What at the time was an *ad hoc* merging of visions for ending war in the former Yugoslavia and for finding ways of dealing with atrocities committed marked the start of a new debate on the tension between peacemaking and justice procedures. Simultaneously, peace and justice practitioners started to grapple with the realities of the tension that was to become a permanent fixture in conflict resolution over the coming years and to this day. Only with the emergence of the ICC did a justice-based approach to war and violence become permanently entrenched in the international landscape, with the tension between peace and justice particularly prominent, as it had become clear since the ICTY and subsequent *ad hoc* courts that even if cases were brought in front of the court, this did not necessarily mean that tension and conflict came to an end.

The case of the LRA highlights the tension between peace and justice in several prominent ways. As the first case of the new ICC, it became somewhat of a test for the now permanently entrenched co-existence of peace and justice. Due to the nature of the conflict involving the LRA, the question of the impact of the Court's engagement in an on-

[2] Ronald Raymond Atkinson, *From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army*, International Peace Institute, New York, 2009.

going conflict sparked a heated debate among victims and rebels as well as scholars, policymakers and practitioners. It also might highlight a disconnection between the imagined nature of international criminal law and the reality of contemporary conflicts, which are multilayered, often low-level, long-term and involve a multitude of actors who play different roles at different times.[3]

The LRA is notorious, widely known for its brutality, tenacity and also its seeming – and much disputed – irrationality in fighting a war without a clear political agenda. In the history of the ICC, the LRA case will remain hugely important – not because it can be considered the ICC's successful debut, but because it became the catalyst for a much broader debate on the role of international criminal justice in conflict situations, usually simplistically depicted as the tension between peace and justice.

This chapter first gives a brief overview of the conflict situation at the heart of the ICC's first arrest warrants, including the broader debate that was launched by the ICC's engagement in Uganda. It then examines what the ICC looked like to the conflict actors who became its first case and who were faced with the tension between peace and justice.[4] The final section links some of the insights to the broader debate on peace versus justice.

6.1.1. Methods

This chapter draws on several years of fieldwork during the Juba talks, as well as leading up to them and long after they had failed.[5] During this time, I regularly communicated and debated with members of the LRA as well as representatives of its political wing, the Lord's Resistance Movement ('LRM'). During the Juba talks, this meant having countless conversations with the LRA/M delegates in Juba or while visiting the various sites of LRA presence. I spoke to many senior LRA commanders, including Joseph Kony and Vincent Otti. This ethnographic approach to under-

[3] See Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, Polity Press, Cambridge, 1999.

[4] A more detailed analysis of how the LRA articulated its expectations of justice procedures is presented in Mareike Schomerus, "'Where are we going to meet?' The LRA's Articulations of Justice and the Proceduralization of Armed Conflict", forthcoming.

[5] See Mareike Schomerus, "Even Eating You Can Bite Your Tongue: Challenges and Dynamics at the Juba Peace Talks with the Lord's Resistance Army", Ph.D. Thesis, London School of Economics and Political Science, 2012.

standing the LRA/M's experience while going through peace talks has obvious caveats, the most important one being that I gathered my information during an extremely tense time in which manipulation of information was common by all conflict actors and the stakes were high for the LRA/M.

6.2. Background: Uganda and the ICC – Seeking Justice for What?

Most writing about Uganda's state referral to the ICC starts with a brief history of the war in northern Uganda, and so will this chapter eventually. It seems the most useful and straightforward way also for a discussion on the role of the LRA case in the development of international criminal law as a discipline. And yet, such brief histories of the war in northern Uganda are often misleading, as they tend to gloss over the very intricacies that make dealing with a violent situation through international justice procedures so challenging. In the list of wars jointly published in 2003 by the Centre for Systemic Peace and the Uppsala Conflict Data Project, the LRA's activities do not make the cut as a "war" at all. The list puts the combined deaths of conflict between the Government of Uganda and the LRA, West Nile Bank Front and Allied Democratic Forces at less than 1,000 conflict-related deaths since 1994.[6] One of the most respected databases on contemporary wars thus contradicts the notion that anyone involved in the violence in northern Uganda could be credibly charged with war crimes.

Jill Lepore has pointed out that within establishing the most prominent name for a war lies "a contest for meaning".[7] While international criminal law seemingly operates with clear definitions of what constitutes a war crime, broader scholarship does not offer clarification on how to name a specific war or the general activity of war. Rather, write Oliver Ramsbotham *et al.*, "current conflict typology is in a state of confusion […] and the criteria employed not only vary, but are often mutually incompatible".[8] This labelling issue is important as naming of a particular crime in the shape of a criminal charge is at the heart of individualised

[6] Oliver Ramsbotham, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution*, 2nd ed., Polity Press, Cambridge, 2005, p. 58.

[7] Jill Lepore, *The Name of War: King Philip's War and the Origins of American Identity*, Vintage, New York, 1998, p. xvi.

[8] Ramsbotham *et al.*, 2005, p. 63, see *supra* note 6.

responsibility for war crimes and crimes against humanity. During the Juba talks, which form the backdrop of this chapter, the LRA/M contested the title "LRA war" primarily on the grounds that issues of marginalisation and abuse were relevant to a larger group of people than just the LRA.[9] Having realised the accountability problems that come with emphasising their own fight against such marginalisation, the LRA/M delegation in late 2009 urged "a return to the negotiating table, to save all the peoples affected by the 'Northern Uganda' conflict from further senseless, destructive and unnecessary military adventures".[10]

Yet, without the title "LRA war", we have few names left to use. The "war in northern Uganda" hardly captures that a much larger territory in Sudan, the Democratic Republic of Congo and the Central African Republic was affected and that the LRA has been active in the Sudans for as long as it was active in northern Uganda. "Kony's war", as it is sometimes called, reduces our understanding of the conflict to the deeds of one person. Sverker Finnstroem and Chris Dolan, two of the most influential scholars on northern Uganda, avoid using the term "war" altogether, offering more socially inclusive terminology: Finnstroem describes the continuous war-like activities as "living with bad surroundings", while Dolan uses the term "social torture" to describe how rebel and government activity destroy the social fabric of the north.[11] In sum, it seems as if we lack a descriptive term that credibly catches the far-reaching impact of structural violence against a population, the existence of an armed rebellion that turned against its own population to battle said structural violence, and the many narratives of communal and personal suffering that make up the collective experience and memory of what has happened in northern Uganda and other affected areas.

Generally speaking, scholars now tend to agree that the Government of Uganda had successfully established a narrative in which the northern population posed a threat to Uganda's general prosperity, which

[9] At other moments, however, they emphasise the meaning of the "LRA" war in order to stress their role as Museveni's adversary.

[10] Justin Labeja, "Open Letter: LRA/M Private Bag, Re: L.R.A. Document on Juba Peace Talks", Nairobi, 2009.

[11] Sverker Finnstroem, *Living with Bad Surroundings: War, History, and Everyday Moments in Northern Uganda*, Duke University Press, Durham, NC, 2008; Chris Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006*, Berghahn Books, Oxford, 2009.

allowed broad dismissal of Acholi grievances,[12] implementation of oppressive measures against a whole population,[13] and allowed fundraising among donors for defence spending.[14] Thus a discussion about justice procedures as a means to end the conflict will need to take as its starting point a much more sophisticated understanding of issues of accountability and context than a criminal charge usually provides.

6.2.1. A Brief History

The history of Uganda's northern war is contested. In 1986 the rebellious forces of today's President Yoweri Museveni, the National Resistance Army ('NRA'), overthrew the government of Tito Okello. This particularly violent year had continued a long history of violence and violent power struggles.[15] In late 1985 Museveni's NRA and Okello's military regime had signed a peace agreement in Nairobi, agreeing on power sharing, a peaceful settlement of the civil war, and on keeping the status quo of the Ugandan political landscape in the hands of Okello, who stemmed from the Acholi region of Uganda.[16] Nonetheless, Museveni marched his NRA forces to Kampala to overthrow Okello. Violence continued after the coup, with the new government under Museveni focusing its counter-insurgency tactics in the northern part of the country where they suspected strong support for Okello. Acholi who had been working with Okello's government were dismissed from positions of power. Many of his supporters fled the country. They would later form the prominent and influ-

[12] Dylan Hendrickson with Kennedy Tumutegyereize, *Dealing with Complexity in Peace Negotiations: Reflections on the Lord's Resistance Army and the Juba Peace Talks*, Concilication Resources, London, 2012, p. 18.

[13] Dolan, 2009, see *supra* note 11.

[14] Andrew Mwenda, "Uganda's Politics of Foreign Aid and Violent Conflict: The Political Uses of the LRA Rebellion", in Tim Allen and Koen Vlassenroot (eds.), *The Lord's Resistance Army: Myth and Reality*, Zed Books, London, 2010, pp. 45–58; Roger Tangri and Andrew M. Mwenda, *The Politics of Elite Corruption in Africa: Uganda in Comparative African Perspective*, Routledge, London, 2013.

[15] Dirk Berg-Schlosser and Rainer Siegler, *Political Stability and Development: A Comparative Analysis of Kenya, Tanzania and Uganda*, Lynne Rienner, Boulder, CO, 1990.

[16] Catherine Barnes and Okello Lucima, "Introduction", in Okello Lucima (ed.), *Protracted Conflict, Elusive Peace: Initiatives to End the Violence in Northern Uganda*, Conciliation Resources, London, 2002, pp. 4–8.

ential diaspora opposition to Museveni's governing National Resistance Movement ('NRM').

Armed resistance widened in northern Uganda, and in Lango and Teso districts. Lango's and Teso's armed rebellions were largely over by the early 1990s; resistance in the north was to remain active for the next decades.[17] The first prominent armed group in northern Uganda was Alice Lakwena's Holy Spirit Mobile Forces, which was defeated by the NRA in 1987.[18] When Kony named himself and his fellow fighters the United Holy Salvation Army in 1988 (later renaming themselves the United Democratic Christian Army in 1992 and then the Lord's Resistance Army) the NRA seemed generally unconcerned, having just defeated Lakwena's forces. Yet Kony, having been asked by the Acholi elders to resist Museveni with force, proved a lot more resilient than expected.[19] Africa's most enduring armed rebel group and one of the world's most compelling rebel leaders was born.

Initially, the LRA's military successes against the oppressive government forces garnered support amongst the northern Ugandan civilian population – particularly so after the government's military offensive Operation North in 1991 was meant to end the LRA insurgency, but instead brought arbitrary arrests and harassment of civilians. Following Operation North, the LRA also increasingly turned against civilians, instilling fear through attacks and abductions and forcefully recruiting most of its fighting force. The LRA's reputation as a fearless rebel group, strengthened by their reported adherence to spiritual rules, was soon established. The LRA justified its violence as a protest against the oppressive Government of Uganda, although public statements by the LRA with a clear political agenda were rarely heard – and, if so, actively discredited by the government.[20]

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17 Frank van Acker, "Uganda and the Lord's Resistance Army: The New Order No One Ordered", in *African Affairs*, 2004, vol. 103, no. 412, pp. 335–57. Ruddy Doom and Koen Vlassenroot, "Kony's Message: A New *Koine*? The Lord's Resistance Army in Northern Uganda", in *African Affairs*, 1999, vol. 98, no. 390, pp. 5–36.

18 Tim Allen, "Understanding Alice: Uganda's Holy Spirit Movement in Context", in *Africa*, 1991, vol. 61, no. 3, pp. 370–99. Heike Behrend, *Alice und die Geister: Krieg im norden Ugandas*, Trickster, Munich, 1993.

19 Billie O'Kadameri, "LRA/Government Negotiations 1993–94", in Lucima, 2002, pp. 34–41, see *supra* note 16; Matthew Green, *The Wizard of the Nile: The Hunt for Africa's Most Wanted*, Portobello Books, London, 2008.

20 Finnstroem, 2008, see *supra* note 11.

While Uganda's south and west gradually became more peaceful and prosperous, other parts, particularly the north, northeast and northwest, fell behind. For a period of intense fighting in the late 1990s and early 2000s, the war garnered hardly any international attention, yet in northern Uganda millions of people were affected by the violence committed by the rebels, the army and the government policy of forcing people into so-called "protected villages".[21] The villages were repositories of forcefully displaced people who were to live and die in these internally displaced persons' camps.[22]

The atrocious conditions in the camps finally attracted the wider attention of the international community. In 2003 the United Nations Under-Secretary-General for Humanitarian Affairs, Jan Egeland, made a highly publicised visit to the region, focusing in his subsequent press appearances on the plight of displaced civilians. Egeland described the situation at the time in an interview in 2007:

> It was very much a forgotten conflict, neglected conflict. I was myself shocked to my bones coming in the autumn of 2003 and I could not believe how bad it was in northern Uganda. And also checking, even in the couple of days, the international community why so little had been done, really, to alleviate the suffering. But also to try to bring the conflict to an end. Everybody had failed. I then went very dramatically public on BBC […] the whole BBC system and later CNN and said we have all failed, the international community, the Uganda government in northern Uganda. So why had it not been brought on the international agenda or on the Security Council agenda? I think because everybody wanted Uganda to remain a success story.[23]

Egeland's visit refocused attention on alleviating civilian suffering in the camps. With civilians' plight moving centre stage, more attention

[21] Paul Omach, "Civil War and Internal Displacement in Northern Uganda: 1986–1998", Poverty Policy Working Paper no. 26, Network of Ugandan Researchers and Research Users (NURRU), 2002; Adam Branch, "Gulu Town in War ... and Peace? Displacement, Humanitarianism and Post-War Crisis", Crisis States Working Paper no. 36, 2008; Caroline Lamwaka, *The Raging Storm: Civil War and Failed Peace Processes in Northern Uganda, 1986–2005*, Fountain, Kampala, 2011.

[22] World Health Organization/Ministry of Health, *Health and Mortality Survey among Internally Displaced Persons in Gulu, Kitgum and Pader Districts, Northern Uganda*, Republic of Uganda, Ministry of Health, Kampala, 2005.

[23] Author interview with Jan Egeland, by phone, 2007.

was given to the experience of the Acholi population at the hands of the government. Some have argued that the government has systematically attempted to destroy the population of northern Uganda,[24] particularly by forcing the entire population into displacement camps. Ruddy Doom and Koen Vlassenroot describe the "fear of extinction held by many Acholi people. In the eyes of Alice [Lakwena], the eve of total destruction was near, and resistance along modern political-military lines had led to defeat".[25] Paul Jackson reiterates how both Alice Lakwena and Kony "believed that the Acholi were about to be wiped out in massacres and reprisals".[26] The narrative of extinction and enslavement comes through in much earlier writing by the LRA, for example in this pamphlet from 1996:

> We took up arms only to defend our very lives, which was threatened by Museveni's marauding soldiers of fortune (1987). […] We also witnessed many atrocities, murder of our relatives, torching of our homes and the looting of our produce and livestock.[27]

Mahmood Mamdani has made the point that "few Acholi saw the government in Kampala as the source of protection. This single fact is testimony to the political failure of this government's northern policy".[28] Few academics would go as far as Ugandan-born Olara Otunnu who, having finished his tenure as UN Under-Secretary-General and Special Representative for Children and Armed Conflict, in his acceptance speech for the Sydney Peace Prize launched a scathing criticism on the international response to the crisis in northern Uganda:[29]

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[24] Todd David Whitmore, "Genocide or Just Another 'Casualty of War'? The Implications of the Memo Attributed to President Yoweri K. Museveni of Uganda", in *Practical Matters*, 2010, vol. 3, pp. 1–49.

[25] Doom and Vlassenroot, 1999, p. 17, see *supra* note 17.

[26] Paul Jackson, "'Negotiating with Ghosts': Religion, Conflict and Peace in Northern Uganda", in *The Round Table*, 2009, vol. 98, no. 402, p. 324.

[27] Lord's Resistance Army. "LRA Policy Definitions and Explanations", unpublished document, 1996.

[28] Mahmood Mamdani, "Kony Not the Real Issue in Peace Talks", in *The New Vision*, 10 July 2006.

[29] When Otunnu went public with his criticism in 2006, concerns about his own political interests in Uganda (he became the leader of the opposition party Uganda People's Congress ['UPC'] and ran for president in 2011) and his well-publicised antagonism towards Museveni did not dampen the impact of his speech.

> I must draw your attention to the worst place on earth, by far, to be a child today. That place is the northern part of Uganda. What is going on in northern Uganda is not a routine humanitarian crisis, for which an appropriate response might be the mobilization of humanitarian relief. The human rights catastrophe unfolding in northern Uganda is a methodical and comprehensive genocide. An entire society is being systematically destroyed – physically, culturally, socially, and economically – in full view of the international community.[30]

Repeating his argument in an article in *Foreign Policy* magazine, Otunnu challenged the common portrayal of the situation in northern Uganda as a consequence of a one-sided cruel campaign of senseless killing conducted by insane rebels.[31] While Otunnu offered the most radical interpretation regarding the intent behind northern Uganda's neglect, most scholars of the conflict agree that northern Uganda's marginalisation was deliberate government policy and that the government's commitment to finding a negotiated solution to the conflict has been and remains questionable.[32] Otunnu's suggestion that the international community was complicit in what was happening in northern Uganda was not new – among scholars, the most detailed work arguing international complicity is that of Adam Branch, Dolan and Finnstroem.[33] As early as 1990 the former President, Milton Obote, had concluded that a better future for Uganda was possible despite the international complicity: "I am convinced that however long it may take and whatever protection the world affords to the oppressors, freedom shall be won and that the Pearl of Africa shall rise and shine

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30 Olara Otunnu, "Saving Our Children from the Scourge of War", 2005 Sydney Peace Prize Lecture, Centre for Peace and Conflict Studies Occasional Paper no. 05/3, 2005.

31 Olara Otunnu, "The Secret Genocide", in *Foreign Policy*, 2006, no. 155, pp. 44–46.

32 Joanna R. Quinn, for example, points out that in the 2004–2005 budget, the Government of Uganda only allocated 0.01 per cent of the national budget to conflict resolution attempts in northern Uganda; Joanna R. Quinn, "Getting to Peace? Negotiating with the LRA in Northern Uganda", in *Human Rights Review*, 2009, vol. 10, no. 1, pp. 55–71. Dolan, 2009, see *supra* note 11, outlines the government system at the heart of the conflict which he calls "social torture". Egeland states in his book that he felt Museveni did not want a negotiated solution; Jan Egeland, *A Billion Lives: An Eyewitness Report from the Frontlines of Humanity*, Simon and Schuster, New York, 2008.

33 Christopher Dolan, "Understanding War and Its Continuation: The Case of Northern Uganda", Ph.D. Thesis, London School of Economics and Political Science, 2005; Adam Branch, *Displacing Human Rights: War and Intervention in Northern Uganda*, Oxford University Press, New York, 2011; Finnstroem, 2008, see *supra* note 11.

again".[34] Over the years, elements within the NRM and NRA (later renamed the Ugandan People's Defence Force ['UPDF']) have stood to gain from the continuation of the war in the north.[35]

During this time, there had been many attempts to bring this conflict to an end,[36] with peace talks having failed in 1988[37] and again in 1994.[38] Particularly 1994 was considered a crucial opportunity which was unsuccessful, argues Dolan, because parity between the government's endeavour to dismiss the LRA and the LRA's quest to seek recognition for what they considered a legitimate struggle could not be established.[39] Others saw in the failure of the talks a confirmation of the LRA's irrationality.[40]

Military campaigns against the LRA have been numerous, yet none was successful in ending either the rebellion or capturing the LRA leadership.[41] Although generally speaking, the Government of Uganda has tended to make public its opinion that a military solution would be needed to bring an end to this rebellion, other paths have been tried. In 2000 Uganda passed a law granting amnesty to those engaged in armed rebellion

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34 A. Milton Obote, *Notes on Concealment of Genocide in Uganda*, A.M. Obote, Lusaka, 1990.

35 Adam Branch, "Political Violence and the Peasantry in Northern Uganda, 1986–1998", in *African Studies Quarterly*, 2005, vol. 8, no. 2; Mareike Schomerus, "'They Forget What They Came For': Uganda's Army in Sudan", in *Journal of Eastern African Studies*, 2012, vol. 6, no. 1, pp. 124–53.

36 Lucima, 2002, see *supra* note 16. Elizabeth Drew (ed.), *Initiatives to End the Violence in Northern Uganda*, Conciliation Resources, London, 2010.

37 O'Kadameri, 2002, see *supra* note 19.

38 Government of Uganda and the Lord's Resistance Army, "Agreement: The Gulu Ceasefire", 2 February 1994. David Westbrook, "The Torment of Northern Uganda: A Legacy of Missed Opportunities", in *Online Journal for Peace and Conflict Resolution*, 2000, vol. 3, no. 2; Peter J. Quaranto, "Ending the Real Nightmares of Northern Uganda", in *Peace Review*, 2006, vol. 18, no. 1, pp. 137–44; Anthony Vinci, "Existential Motivations in the Lord's Resistance Army's Continuing Conflict", in *Studies in Conflict & Terrorism*, 2007, vol. 30, no. 4, pp. 337–52.

39 Dolan, 2005, p. 109, see *supra* note 33.

40 Dennis Pain, *"The Bending of Spears": Producing Consensus for Peace & Development in Northern Uganda*, International Alert/ Kacoke Madit, London, 1997.

41 Andre Le Sage, "Countering the Lord's Resistance Army in Central Africa", in *Strategic Forum*, 2011, no. 270, pp. 1–16. Ronald R. Atkinson, Phil Lancaster, Ledio Cakaj and Guilaume Lacaille, "Do No Harm: Assessing a Military Approach to the Lord's Resistance Army", in *Journal of Eastern African Studies*, 2012, vol. 6, no. 2, pp. 371–82.

against the government.[42] In 2004 we saw another failed attempt at peace talks, in which the exact demarcation of an assembly zone for the rebels proved the major stumbling block, and a bombing attack on the area spelled the end of this attempt.[43] When, in early 2005, rebels and the government in neighbouring Sudan signed a peace agreement, the LRA also lost easy access to the area to which they had successfully withdrawn in the early 1990s.[44]

The northern Ugandan situation has attracted much attention in the mainstream press, in social media and in scholarship. International audiences became engaged, thanks to a series of films and documentaries produced on the plight of the children of northern Uganda.[45] Scholarship on the LRA conflict has covered a range of issues, such as the role and ineffectiveness of aid agencies in complex situations,[46] health in the displacement camps,[47] living conditions in the war zone,[48] and later on the role of international advocacy.[49] Much has been written about northern Uganda's and the Acholi's marginalisation, deprivation and how both ver-

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42 Barney Afako, *Promoting Reconciliation: A Brief Review of the Amnesty Process in Uganda*, CSOPNU, Kampala, 2002. Lucy Hovil and Zachary Lomo, "Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation", Refugee Law Project Working Paper no. 15, February 2005.

43 "Traditional Leader meets LRA", in *Sudan Mirror*, 13–26 December 2004.

44 Gerard Prunier, "Rebel Movements and Proxy Warfare: Uganda, Sudan and the Congo (1986–99)", in *African Affairs*, 2004, vol. 103, no. 412, pp. 359–83; Mareike Schomerus, *The Lord's Resistance Army in Sudan: A History and Overview*, Small Arms Survey, Geneva, 2007.

45 Jason Russell (dir.), *Kony 2012*, Invisible Children, USA, 2003 (film); Ali Samadi Ahadi and Oliver Stoltz (dirs.), *Lost Children*, Arte, Dreamer Joint Venture Filmproduction and Westdeutscher Rundfunk, Germany/France, 2004 (film); Sean Fine and Andrea Nix Fine (dirs.), *War/Dance*, THINKFilm, USA/Japan, 2007 (film).

46 Branch, 2011, see *supra* note 33.

47 S. Accorsi, M. Fabiani, B. Nattabi, B. Corrado, R. Iriso, E.O. Ayella, B. Pido, P.A. Onek, M. Ogwang and S. Declich, "The Disease Profile of Poverty: Morbidity and Mortality in Northern Uganda in the Context of War, Population Displacement and HIV/AIDS", in *Transactions of the Royal Society of Tropical Medicine and Hygiene* 2005, vol. 99, no. 3, pp. 226–33.

48 Finnstroem, 2008, see *supra* note 11.

49 Amanda Taub (ed.), *Beyond Kony 2012: Atrocity, Awareness and Activism in the Internet Age*, Leanpub (e-book), 2012; Mareike Schomerus, "'Make Him Famous': The Single Conflict Narrative of Kony and Kony2012", in Alex de Waal (ed.), *Advocacy in Conflict: Critical Perspectives on Transnational Activism*, London, Zed Books, 2015.

tical and horizontal inequalities have contributed to the long conflict.[50] The literature dealing with political and social developments in Uganda, including Uganda's path dependency due its history of violence, political culture, identity and marginalisation all connected to the LRA conflict, is vast.[51] In 2012 the LRA and its leader Joseph Kony became an internet sensation, when the US-based advocacy group Invisible Children launched the hugely successful video campaign *Kony 2012*, calling for the arrest of Kony and for US military support in the matter.[52]

The focus on LRA commander-in-chief Joseph Kony as a solely responsible actor means there is little mainstream analysis of group behaviour or of the finer points of individual choices made by LRA actors. As a fascinating figure for popular culture, easily depicted as the root of all evil, the focus on Kony has blurred understanding of the broader context. This is a crucial point in the debate regarding the applicability of international criminal law in complex conflict situations. The most poignant moment of this personalisation came in 2005, when the newly established ICC concluded a contentious two-year investigation that led to the issuing and later the unsealing of arrest warrants for five LRA commanders, including Kony and Otti.

When the ICC announced in 2003 Uganda's state referral to investigate the war in northern Uganda, critics argued that Uganda's government had received ICC support in portraying the war as a one-sided LRA

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50 Frances Stewart, "Horizontal Inequalities: A Neglected Dimension of Development", CRISE Working Paper no. 81, Queen Elizabeth House, Oxford, February 2002.

51 Edward A. Brett, "Neutralising the Use of Force in Uganda: The Rôle of the Military in Politics", in *Journal of Modern African Studies*, 1995, vol. 33, no. 1, pp. 129–52; Holger Bernt Hansen and Michael Twaddle, *Uganda Now: Between Decay and Development*, James Currey, Oxford, 1988; Holger Bernt Hansen and Michael Twaddle, *Changing Uganda: The Dilemmas of Structural Adjustment & Revolutionary Change*, James Currey, Oxford, 1991; Holger Bernt Hansen and Michael Twaddle, *Developing Uganda*, Ohio University Press, Athens, 1998; Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press, Princeton, NJ, 1996; Frank Knowles Girling, *The Acholi of Uganda*, Her Majesty's Stationery Office, London, 1960; Ronald R. Atkinson, *The Roots of Ethnicity: The Origins of the Acholi in Uganda before 1800*, Fountain Publishers, Kampala, 1994.

52 Mareike Schomerus, Tim Allen and Koen Vlassenroot, "Obama Takes on the Lra: Why Washington Sent Troops to Central Africa", in *Foreign Affairs*, 15 November 2011; Taub, 2012, see *supra* note 49; Schomerus, forthcoming, see *supra* note 4.

problem only.[53] At the time, Uganda's contact with the ICC had seemed a straightforward state referral to the ICC – albeit the first of its kind – yet the sequence of events and political interests at play have become contested. The ICC narrative has always been that once Uganda requested an investigation, the Court had to follow up with activities in Uganda.[54] But there are accounts from within Uganda that suggest that the ICC had approached Uganda to ask for a state referral.[55]

On 9 July 2005 the ICC issued five sealed warrants for the LRA commanders Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen.[56] The warrants were unsealed on 13 October the same year. The reception was mixed. The move was called a historic step towards ending impunity for the worst of crimes.[57] Yet the ICC's engagement sparked a lively scholarly debate on the Court's role in conflict situations and the politics of justice and accountability.[58] The broader debates on the merits of ICC involvement in an ongoing conflict tended at first to fall into several categories. However, debates and commentary continue. Due to the recent history of how international criminal justice had emerged, international justice interventions are viewed by its supporters as a matter of principle. Some more finely tuned analysis highlighted

53 Adam Branch, "Uganda's Civil War and the Politics of ICC Intervention", in *Ethics & International Affairs*, 2007, vol. 21, no. 2, pp. 179–98; Louise Parrott, "The Role of the International Criminal Court in Uganda: Ensuring That the Pursuit of Justice Does Not Come at the Price of Peace", in *Australian Journal of Peace Studies*, 2006, vol. 1, no. 1, pp. 8–29.

54 Matthew Brubacher, "The ICC Investigation of the Lord's Resistance Army: An Insider's View", in Allen and Vlassenroot, 2010, pp. 262–77, see *supra* note 14.

55 Barney Afako, "Experiencing Justice in Fragile and Conflict-Affected Contexts", Alastair Berkeley Memorial Lecture, London School of Economics and Political Science, 7 November 2012.

56 As of mid-2015, only Kony and Ongwen are still alive, with Kony still at large. Ongwen in early 2015 was taken into custody in the Central African Republic and was later extradited to stand trial at the ICC.

57 "Annan hails International Criminal Courts' Arrest Warrants for Five Ugandan Rebels", in UN News Service, 14 October 2005.

58 Nicholas Waddell and Phil Clark (eds.), *Courting Conflict? Justice, Peace and the ICC in Africa*, Royal African Society, London, 2008; Tim Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army*, Zed Books, London, 2006; Sarah M.H. Nouwen, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan*, Cambridge University Press, Cambridge, 2013.

the political uses of the ICC by the Ugandan government,[59] which had acted externally as if concerned about atrocities against civilians, but had a poor human rights record.[60]

Others saw justice procedures as a necessary step towards peace, but thought that justice could only serve peace if a careful consideration of the impact of punitive measures was made. Most argued that retributive justice was a more promising path to peace and that such procedures could only be accommodated through locally relevant approaches,[61] which would be admissible under the ICC's rule of complementarity and focus on victims.[62] A vast range of scholarship focused on specific Acholi justice procedures, some of it optimistic about the abilities to heal communities,[63] some of it scathing of such interpretations.[64] A prominent point that was made regularly was the limited extent to which the affected population had been consulted on their experience of the conflict by the ICC.[65] A most striking manifestation of the disregard for local sentiments was when local leaders in northern Uganda voiced their concerns about the impact of potential ICC warrants on the peace process.

On 15 March 2005 Acholi leaders from northern Uganda travelled to The Hague to ask the ICC to refrain from issuing arrest warrants

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59 Phil Clark, "Law, Politics and Pragmatism: The ICC and Case Selection in Uganda and the Democratic Republic of Congo", in Waddell and Clarke, 2008, pp. 37–45; Phil Clark, "Chasing Cases: The ICC and the Politics of State Referral in the Democratic Republic of Congo and Uganda", in Carsten Stahn and Mohamed M. El Zeidy (eds.), *The International Criminal Court and Complementarity: From Theory to Practice*, vol. 2, Cambridge, Cambridge University Press, 2011, 1180–1203; Branch, 2007, see *supra* note 53.

60 Kenneth A. Rodman and Petie Booth, "Manipulated Commitments: The International Criminal Court in Uganda", in *Human Rights Quarterly*, 2013, vol. 35, no. 2, pp. 271–303.

61 Issaka K. Souaré, "The International Criminal Court and African Conflicts: The Case of Uganda", in *Review of African Political Economy*, 2009, vol. 36, no. 121, pp 369–88; Kai Ambos, "The Legal Framework of Transitional Justice: A Systematic Study with a Special Focus on the Role of the ICC", in Kai Ambos, Judith Large and Marieke Wierda (eds.), *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development: The Nuremberg Declaration on Peace and Justice*, 2009, pp. 19–103.

62 Nouwen, 2013, see *supra* note 58.

63 Terry Beitzel and Tammy Castle, "Achieving Justice through the International Criminal Court in Northern Uganda: Is Indigenous/Restorative Justice a Better Approach?", in *International Criminal Justice Review*, 2013, vol. 23, no. 1.

64 Tim Allen, "Ritual (Ab)use? Problems with Traditional Justice in Northern Uganda", in Waddell and Clark, 2008, pp. 47–54, see *supra* note 58.

65 Christian Noll, "The Betrayed: An Exploration of the Acholi Opinion of the International Criminal Court", in *Journal of Third World Studies*, 2009, vol. 26, no. 1, 99–119.

against LRA leaders. Their voices and actions would fall in line with another broad category of voices on the ICC intervention that saw justice as an obstacle to a negotiated, non-military end to the violent conflict – replaced with a difficult-to-execute arrest warrant.[66] Because an arrest warrant is a drastic and at first a zero-sum solution, some saw the warrants as naturally pushing military attempts to end the conflict.[67] Many commentators, however, argued for a more holistic approach that would help abandon the dichotomies of international and local justice[68] or peace and justice.[69] One quickly emerging claim – although unsubstantiated and contradictory – was that the ICC warrants had pushed the LRA towards the negotiating table.[70]

6.3. The LRA/M's View on the ICC during Peace Talks

In July 2006 the Government of Uganda and the LRA/M entered into peace talks in South Sudan's capital Juba; justice and accountability were one of the agenda items to be negotiated and the international context determined that the ICC warrants would somehow – if implicitly – need to be addressed. In the end, a justice agreement was formulated and signed that established justice procedures within Uganda.[71] However, the Juba talks did not end with a fully endorsed peace agreement and after repeated refusals by Kony to sign such an agreement, the Ugandan army put an end to this peace effort.

For some of the international observers or parties of interest, the tension between the ICC warrants and the approach to negotiating peace in Juba posed a difficult challenge to navigate and interpret. In a parliamentary discussion in the United Kingdom, one participant outlined that

66 Kasaija Phillip Apuuli, "The ICC Arrest Warrants for the Lord's Resistance Army Leaders and Peace Prospects for Northern Uganda", in *Journal of International Criminal Justice*, 2006, vol. 4, no. 1, pp. 179–187.

67 Rodman and Booth, 2013, see *supra* note 60.

68 Jackson, 2009, see *supra* note 26.

69 Janine Natalya Clark, "The ICC, Uganda and the LRA: Re-Framing the Debate", in *African Studies*, 2010, vol. 69, no. 1, pp. 141–60.

70 Nick Grono and Adam O'Brien, "Justice in Conflict? The International Criminal Court and Peace Processes in Africa", Paper presented to the Royal African Society, 11 October 2007.

71 Barney Afako, "Negotiating in the Shadow of Justice", in Drew, 2010, pp. 21–23, see *supra* note 36.

the UK's position was not as clear-cut as its official support for the ICC might have suggested:

> One of the most difficult issues is the ICC indictments [*sic*] because the ICC has to be supported and the credibility of talks competes with international justice efforts to end violence in the region. I sense that the ICC does not regard itself as a blunt instrument. Is this the best thing for northern Uganda? The ICC position is very sophisticated.[72]

During the Juba talks, the justice issue had at various points threatened to overpower broader political debates – particularly in the international perspective portrayed in the bulk of the press coverage. Much of the debate continued to focus on whether or not the Court should have intervened in the conflict in the first place, with critics including Ugandan leaders and some international organisations. The supporters of the ICC, however, were a powerful lobby, leading, as Kimberley Armstrong argues, to a situation in which the approach taken towards conflict resolution was heavily driven by justice considerations.[73]

The LRA/M's position on the ICC ricocheted as much as Museveni's approach to the amnesty law. Vincent Otti had gone from expecting his immediate hanging to saying that he was convinced that the ICC was not to be taken seriously. He then started to express doubts as to whether his security could be assured by the Sudan People's Liberation Army if he were to go to Juba. He followed this statement with an announcement that the ICC's lifting of the arrest warrant would be a precondition for disarmament: "Not even a single LRA soldier will go home before it is lifted […] the ICC is the first condition, without that I cannot go home because it might be a trap".[74] Museveni countered that a peace deal was a prerequisite for a removal of the warrants (which is not technically possible), otherwise he said that the LRA "will die on our hands or the hands of the ICC".[75]

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[72] Author notes, Parliamentary Discussion, Westminster Adjournment Debate on the Juba Talks, 2007.

[73] Kimberley Armstrong, "Justice without Peace? International Justice and Conflict Resolution in Northern Uganda", in *Development and Change*, 2014, vol. 45, no. 3, pp. 589–607.

[74] "Uganda Rebel Deputy Admits Child Abductions", in *Agence France-Presse*, 3 September 2006.

[75] "ICC Indictments against Rebels Should Stay, Says President", in *IRIN News*, 21 September 2006.

For the LRA/M, encountering the ICC posed a number of contradictory challenges. On the one hand, they expressed anger and frustration about being singled out as one conflict actor. Yet members also argued that they could use the momentum of attention that the ICC had created to expose more effectively government atrocities. At times they suggested that they were going to alert the ICC to the government's crimes, unaware of the procedures of state party referral. The second possibility was to use the growing opposition against the ICC to establish a uniquely homegrown system of dealing with the past, which by definition had to be quite shielded from the influence of international frameworks and actors. Dealing with the past in either way was not just a way out of an entrenched conflict situation. Individual actors also clearly recognised that they needed a mechanism that either involved an international powerhouse such as the ICC to act as an umpire or a new actor that had to be created in opposition to such powerhouse and the strings that the Government of Uganda had been able to pull to get the justice issue framed in terms that served its purpose. Without such mechanisms it was clear to the individuals in the LRA that their return to a state of not being at war and living a peaceful life was an illusion.

For the LRA/M, the justice issue was at first framed in an entirely different manner. It is important to note that in 2006 the Court was still a very young institution; the LRA/M was not entirely clear on the mandate of the Court or how it worked. An international community still trying to figure out the same did not provide much clarity. Otti's suspicion that a public hanging in The Hague was the fate that awaited him should he get caught was as real to him as the interpretation by various actors that the ICC had arresting powers, extradition treaties or all other kinds of collaborations with intelligence agencies or further powers which the Court does not in reality have.

With the exact role of the Court unclear, it is perhaps not surprising that the LRA/M's early approach to the ICC issue was of a very different kind than what is widely remembered or assumed. They were convinced that for a prosecution upholding international standards to be fair, the ICC investigators and the prosecutor would need to come and talk to them. Kony set out his views on the ICC's lack of engagement with, as he saw it, both sides of the story, as follows. He expressed his bewilderment that an international procedure was started on one-sided information: "They only hear from Museveni side. From my side they did not hear anything.

They did not question me, they did not ask me, they did not interview me about that ICC". For him, the arrest warrant stood in direct contrast to the pursuit of a peaceful solution:

> And we did not know that reason why we are accused in The Hague. We don't know. They [the ICC] just hear from what Museveni stated to them only. So if they want peace, they will take that case from us. But if they do not want peace, then they will continue with it. Or if they want peace, they take a proper way to convince Kony or to talk with Kony [and] Museveni. And going to talk, so that they will prove that who did those things. Who did the thing, which people say that we are being accused. Who did that things [that] the international body want to know. If they want peace to be, they will call all of us together then we talk about it. But [it is not enough to say] that I am guilty or I am wanted with the ICC. Then come here to arrest me without knowing [my side of the story].[76]

Kony said that he had found out via the news that he was wanted in The Hague:

> That one, I hear. I read in the paper like that. LRA leadership, Joseph Kony is wanted by International Criminal Case. That one, as I see, I am not bad or I am not guilty. I did not. I have not done what Museveni is accusing me of.

His main point of contention – or confusion, depending on one's opinion about the nature of the self-referral – was that Museveni was allowed an international forum to accuse Kony and the LRA of crimes without a possibility of them giving their side of the story.

> It is not true. Because what they are saying that I have done, this is not true. And that accusation was sent by Museveni to [The Hague] […] we know very well that Museveni is the one who did that to block us or to spoil our name.

In the eyes of the commander of the LRA, a just approach on the international level could not prejudge even during an investigation. While presumably lack of clarity about the exact procedures is also at the heart of this sentiment, the point that an international institution needs to be per-

[76] Author interview with Joseph Kony, 12 June 2006. A full transcript of the interview can be found in Mareike Schomerus, "'A Terrorist Is Not a Person Like Me': An Interview with Joseph Kony", in Allen and Vlassenroot, 2010, pp. 113–31, see *supra* note 14.

ceived as just if it is not to interfere negatively in a peace process is important.[77] Otti made a similar point in a newspaper interview:

> We were indicted without being questioned. We were not even investigated. That is why we decided to at least first of all send some of our delegates to go and find it properly from The Hague and from the court prosecutor to explain to them or we would like the prosecutor to send his staff to come here and hear from us whether we have really committed crime.[78]

The crucial grievance that runs through some of these comments on the ICC's perceived one-sidedness is the seeming lack of attention given to the crimes of the Ugandan government. In the eyes of the LRA/M, this had followed a long tradition of international positive bias about Museveni. Former President Obote had written at length about what he perceived to be an inappropriate international liking of Museveni;[79] Egeland's analysis that "everyone wanted Uganda to remain a success story" might go some way towards explaining why attention remained scatty for a considerable time.

The issue of fairness of institutions that got involved in resolving Uganda's conflict was a recurring theme for the LRA/M. A September 2006 press release by the LRA/M delegation stated what had been said on and away from the tables in Juba in many different guises. It summed up the LRA/M's feelings that they had not been accepted as a fair negotiation partner by the Government of Uganda, or the mediating government of southern Sudan, for that matter. The press release expressed the outrage the LRA/M felt about what they perceived to be the Government of Uganda's approach: to make very clear that negotiating with the LRA was not what the Government of Uganda had in mind. The LRA criticised "the repeated statements by the regime in Kampala", which the LRA interpreted as the government's stance, that they had only accepted to enter the talks "to give the LRA/M a safe landing". Further they criticised that Kampala had said that

> some of the demands being made by LRA/M are unrealistic; the LRA combatants should lay down their arms and benefit from the Amnesty Act; the talks should be quick and expedi-

[77] See also Schomerus, forthcoming, see *supra* note 4.

[78] "LRA Rebels to Send Delegates to the ICC", in *Voice of America*, 24 January 2007.

[79] Obote, 1990, see *supra* note 34.

> tious; but in any case; should be completed within a time frame determined by the regime in Kampala; most of the demands are already addressed by the laws of Uganda and other Government programmes.[80]

The public response by the LRA summed up how the LRA/M battled for its honour in the peace talks. This honour was both a personal as well as an institutional issue; it was important that individuals were treated fairly and that the UPDF was evaluated to the same standard as the LRA.

Kony himself argued that the LRA was being mistreated in the justice debate since their views on the actual charges they had received, the fairness of the international justice system and the lack of disregard for crimes committed by the government amounted to a major stumbling block in the peace talks.

Criminal justice in general does not work with the premise that its processes and procedures need to make sense to those who are being targeted. Yet international criminal justice as a force intervening in an active conflict with many different types of perpetrators and crimes committed ought not to have such luxury – after all what is at stake in establishing what accountability means might be peace for a larger population, rather than just prosecution of an individual.

Northern Ugandans' experience of being herded into internally displaced persons' camps for the better part of two decades featured prominently in the LRA/M's argument for more accountability of the government.[81] One LRA/M statement read:

> Due to the brutality of the armed conflict, the region has literally been made into a wasteland. Tens if not hundreds of thousands of people in the region have died, and over 2 million people were displaced and encamped under genocidal conditions – mainly as a result of the government army's counter-insurgency measures.[82]

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80 LRA/M Delegation in Juba, Press Release, Juba, 2006.

81 The internally displaced persons' situation has been widely documented, from Egeland's description to the World Health Organisation's assessment of deadly conditions in the camps, Allen's assessment of the camps as a crime against humanity, Branch's argument that the camps were a government crime propped up by the international community, to Finnstroem's anthropological treatise on the meaning of displacement.

82 LRA/M Peace Team, "Juba Peace Talks: The Record of Sabotage by the Government of Uganda; the Reasons General Joseph Kony Wants the Peace Agreement Revisited; and, the Way Forward", Nairobi, 2009.

Even narratives of displacement, seemingly easy to confirm factually, differ vastly in the conflict. Established wisdom is that the first camps were established around 1996 and this is certainly the beginning of the official policy to establish "protected villages" when the war had already been firmly entrenched and, indeed, many peace efforts seemed to have gone nowhere. The LRA narrative about internal displacement was quite different. Several LRA officers, including Vincent Otti, reiterated that the first time Acholi were herded into camps was only about a year after Museveni took power, which would have been 1987. Some said that it took only a few months for the first Acholi to be forced out of their homes into camps. One younger LRA officer, who says he was born in 1980, described how he remembered people being taken into camps when he was a young child.[83] It has been established that the Government of Uganda did force some people into camps as early as 1987. Caroline Lamwaka, a Ugandan journalist working in Gulu at the time, seems to at least partially confirm the LRA version. She estimated that between December 1986 and June 1988, of the 400,000 residents of Gulu district, 28,000 were displaced in Gulu town and more than 25,000 were "residing near the various NRA detaches in the rural areas, showing signs of malnutrition and living under appalling hygiene conditions".[84] She describes the early displacement camps:

> The 'Caribbean camp' was a grotesque structure with open doors and windows without frames and fittings. A few hundred people were residing there, brought in by the army from Atiak, 42 miles northwest of Gulu, in January 1987 after a fierce battle there. […] The displaced people relied mainly on meagre food from the Ministry of Rehabilitation and from relatives and friends in town. It was a humanitarian crisis of the first order.[85]

Putting the date of mass displacement of Acholi through government forces as early as 1987 also explains the extent to which the LRA presented itself as a legitimate reactive force, acting upon the injustice imposed upon their people by others. This stance continued to be strengthened through the years, with probably the highest rates of displacement happening between 2002 and 2005, when displacement in-

83 Author notes, Conversation with the LRA/M delegation in Juba, 2006.

84 Lamwaka, 2011, p. 96, see *supra* note 21.

85 *Ibid*.

creased again as a reaction to the UPDF's military campaign. In September 2002, for example, the army ordered the whole of Pader district to move to displacement camps within 48 hours.

> Pader district, which up to that time had almost no displaced camps and where people used to stay in their villages, became 100% displaced. People in few remaining villages in Kitgum, where people had resisted leaving their homes all these years, were forced out by the Army during the last months of 2003 and beginning of 2004.[86]

For the LRA/M, the narrative of crimes committed is thus strongly shaped by their understanding that was has happened to the Acholi people was a genocide. In the first LRA/M position paper, Obonyo Olweny as the signatory of the paper picks up on this: "The creation of the IDP Camps had all hallmarks of achieving [a genocide], because it would, at the same time rapture the cultural fabrics, which made them; especially the Acholi; so proud and confident".[87]

"Genocide is the most serious crime that any one can commit under International Law", a set of unpublished notes of the LRA/M delegation read.[88] The note-gatherer refers to Otunnu's article in *Foreign Affairs*, in which he declared: "the Human Rights catastrophe unfolding in Northern Uganda is a methodical and comprehensive genocide. An entire society is systematically being destroyed physically, culturally, socially and economically in the full view of the international community".[89]

In July 2006, when the Juba talks began, the international debate on justice for crimes against humanity and genocide had taken a decisive turn for various reasons. Certainly the LRA's own steps towards peace talks, often seen as a mere reaction to the threat of international prosecution, were playing their part in stimulating a more detailed debate on issues of justice and peace. But in the broader context, the way that such crimes against humanity were being talked about was radically changing. The Save Darfur campaign, spearheaded by celebrities such as George

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86 Fr. Carlos Rodriguez, "The Northern Uganda War: The 'Small Conflict' that Became the World's Worst Humanitarian Crisis", in *Health Policy and Development Journal*, 2004, vol. 2, no. 2, pp. 81–84.

87 Obonyo Olweny, First Position Paper of the Lra Peace Delegation During Negotiations, 2006.

88 Unpublished notes of the LRA/M Delegation in Juba, 2006.

89 Otunnu, 2006, see *supra* note 31.

Clooney, had firmly put the genocide label on the table for the war in Darfur. While Otunnu, and as a consequence the LRA/M, argued on the basis of the UN Genocide Convention that the government of Uganda's treatment of Acholi was a genocide, the Save Darfur campaign initiated a different kind of debate in which genocide became equivalent to the most terrible crime, the crime of choice if a label had to be put on something brutal, far-reaching and incomprehensible.

The LRA/M went into the debate using the term genocide, yet also outlining that genocide through neglect or genocide through unfair treatment was what they saw at the heart of this conflict.[90] The position paper states:

> It is the inescapable duty of the state to not only give, but also to be seen to give fair and equal treatment to all different people in the country. The perception of injustice and unfairness in the treatment it receives from the Government by any section of people in the country is usually the immediate cause of any war or conflict between the Government in power and that section.

In calling on the perception of injustice and unfairness, the LRA/M confirms the importance of narratives: it is not only a problem if a government is unjust, it is also a problem if is it perceived to be unjust, thus if the narrative on the government is one of unjust behaviour.

> If justice, as we understand it, is the fair and equal treatment of people or it is the perception by the people of the quality of the Government being fair and reasonable then we would implore the NRM/A government to search its soul to see

[90] Daniel Chirot and Clark McCauley identify the Irish potato famine as a similarly disputed example, asking whether this was a neglect by the British government – or neglect with the intent to kill more than one million people by simply not helping them. Daniel Chirot and Clark McCauley, *Why Not Kill Them All? The Logic and Prevention of Political Mass Murder*, Princeton University Press, Princeton, NJ, 2006. Similar lines of argument have been used in either proving or disproving the Acholi genocide theory. This is clear in the LRA/M's argument that "numerous other genocidal techniques have been employed by dictator Museveni including starvation, malnutrition, disease and insanitation infecting the civilian population with HIV/AIDS by HIV/AIDS positive soldiers inflicting serious bodily and mental harm on the people, impoverishing substantially and immiserising the victims of genocide". LRA/M Delegation in Juba, Unpublished notes, 2006.

> whether it has been fair and reasonable in its treatment of the northern and eastern regions of the country.[91]

Olweny further recounted the testimony of Benon Ogwal, at the time the Anglican Bishop of Northern Uganda:

> By Devine [*sic*] providence the Bishop happened to be on his way from Kampala to Gulu through the Karuma Bridge and had the rare opportunity of witnessing the movement of the population and their livestock. According to him he had to wait for close to five hours for the population to cross the bridge with over 1,000,000 animals – cattle, goats and sheep. On arrival at Bweyale the people were shown where to put up camps but were not allowed to keep their animals, which were taken away by the UPDF soldiers. Fervent reports to Government authorities only attracted retributions.[92]

The LRA/M, in its criticism of one-sided international attention to issues of conflict in northern Uganda, also drew heavily on descriptions noted by the former President, Milton Obote. Written in 1990, Obote lists clearly what to the LRA/M became the main narratives of the conflict. Obote wrote:

> 3. […] The International Media and Human Rights Organizations such as Amnesty International, Minority Rights Group and International Alert have painted and continue to paint Museveni and his regime in glowing colors that to them there is no myth. According to them, Uganda, under Museveni, is rapidly recovering from the agonies of the past and there is much improvement.
> 4. These Notes present the opposite view that Uganda, under Museveni's regime, is a Police State where:
> 5. Genocide has been and still reigns even as I write;
> 6. Entire villages have been and continue to be destroyed by soldiers of the regime as legitimate and proper action against "rebels";
> 7. Foodstuffs in the fields and in granaries in the so-called "war-zones" have been and continue to be uprooted, burnt or destroyed allegedly to deny succor to "rebels";

[91] Obonyo Olweny, LRA/M Opening Speech at First Juba Peace Talks Opening Ceremony, 2006.

[92] Olweny, First Position Paper of the LRA Peace Delegation During Negotiations.

8. Water wells and boreholes in the ”war-zones” have been either poisoned or dismantled;
9. The entire livestock in several Districts have been looted by the National Resistance Army (NRA), the soldiery of the Museveni regime;
10. In the Districts of Gulu, Kitgum, Lira, Soroti, Kumi, a large part of Tororo and now Kasese – (population 2.8 million 1979 census) – where the NRA soldiers have wrought their greatest havoc, those not massacred, arrested or detained are forced by the soldiers to go to Concentration Camps where many die on various accounts of torture, and from lack of food, water, medication and protection against inclement weather;
11. Women in the Concentration camps and in the “war-zones” are at the mercy of the NRA soldiery to abuse as they fancy;
12. Soldiers known to be infected with contagious diseases including the deadly HIV are posted to these Concentration camps where they are free to mix and abuse the female inmates. The Concentration camps are in fact cauldrons of genocide where the vulnerable groups (the children, pregnant women and the elderly) are taken to die. The list in not exhaustive.[93]

In a speech to a group of people who had come to see him in the bush at a critical juncture for the peace talks, Kony talked at length about what he considered the problem with how accountability had been handled in the peace talks so far. Among his audience were representatives of the United Nations, the Government of Uganda, various non-governmental organisations and members of northern Ugandan civil society. By this time (December 2006) the issue of the ICC had been around the table a few times in a range of different interpretations and the LRA’s stance on whether or not they considered the ICC the crucial obstacle to finding a peaceful solution to the conflict in northern Uganda had become increasingly instrumentalised. The purpose of the meeting in the bush had been, among other things, to allow Kony and his senior commanders to receive some legal advice on the exact jurisdiction of the ICC. Kony had listened to some of it and then launched into his own interpretation of the

[93] Obote, 1990, see *supra* note 34.

matter at hand. He argued that if the problems in northern Uganda were to be finally solved, it was necessary that "in respect to ICC we must act with honesty and truthfulness so that matter of ICC brought to a logical conclusion". He was talking in Acholi, with a translator with legal background translating on the spot:

> I want to emphasise that in our view the fairest way to go about this matter, the ICC should avail themselves to come and talk to us so that at least they know our view about this matter. […] What we keep on hearing from mass media, we hear arrest warrant has been served on us, giving for execution to UNMIS, MONUC [the UN missions in Sudan and the Democratic Republic of Congo at the time], Sudan without giving an opportunity to talk to us. This is what is so worrying to us.

A further aspect that he considered unfair was that in 2006 matters of war and peace in Uganda were now too focused on the ICC's cut-off date for investigations. With crimes prior to 2002 not being part of the Court's jurisdiction, the issue of war in northern Uganda was now strangely concentrated on a limited time frame. Kony argued:

> I want to challenge my brothers [the lawyers present] who are more knowledgable than me. I want to put it to you in our view that members of ICC have to have an opportunity to come and talk to us so that we can understand the nature of indictment and the problem we are now landed with.

Kony continued (speaking of himself in the third person):

> The international justice system is insincere. If UN really wants the world at peace, UN should not turn to be justice for strong. If they see Kony as a weak man, they pursue him. If that is the rule of the game, the only option is to fight so that international community sees you are strong and let you walk free […]. Charles Taylor tried to help Sanko who did not succeed. Taylor war taken to justice because he was now vulnerable. If that is the rule of the game, it means that getting powerful is enough. If UN wants that to be the rule of the game, let it be clear […].[94]

[94] Author notes on Joseph Kony's speech to UN staff, mediation team, Acholi representatives and legal advisers, Ri-Kwang-ba, 2006.

Countering Government of Uganda's propaganda with a version of their own, the LRA sought to reset the public's opinion about what had happened in Uganda and the role the LRA had played. In doing so, they focused on establishing why their actions had been justified. The public manifestation of the new LRA/M narrative, however, hardly moved beyond a crude whitewashing with a focus on denying atrocities and deflecting guilt for attacks to the UPDF. The set-up of the talks, the LRA/M argued privately, had made a more nuanced public presentation impossible. I observed several moments during the talks when delegation members and the high command were cornered about atrocities. Their visible reaction seemed to be embarrassment, as if atrocities and the past should not be discussed in public – an interesting counterpoint to the request to go deeper into the past when dealing with government actions. An LRA member confirmed that this impression was correct – from the LRA point of view, he said, the LRA could not talk openly about crimes they had committed because of the threat of ICC prosecution and because "talking about it like that makes it hard to reconcile".[95] In less public situations, members freely admitted that the LRA had committed violent crimes.[96] In the early days of the Juba talks, delegates even argued that it would be beneficial for the LRA to go to the ICC in The Hague to be tried as it would give them an opportunity to present their evidence of government of Uganda atrocities.

6.4. Peace versus Justice?

The relationship between international criminal law and justice, on the one hand, and peace processes, on the other, has been mistakenly narrowed down to a dichotomous framing of peace versus justice. From the perspective of international criminal law as a discipline, the extent to which states are allowing international criminal law to play a role is indicative of their commitment to the framework. From the perspective of bringing peace among conflict parties who are not necessarily states, the focus on international criminal law is disturbingly narrow. First, because it does not necessarily take into account power dynamics between conflict actors, and second, because its focus on individuals overlooks systemic

[95] Author notes on departure day first field mission of the Cessation of Hostilities Monitoring Team, 2006.

[96] *Ibid*.

and structural issues that are often the expression of one kind of violence, or cause of another.

Defying the increased understanding of the complexity of events and networks that make up this now regional conflict, conflict resolution approaches as well as the broader debate on justice and peace have stayed surprisingly linear. The main approach seems to still be an understanding that this conflict is made up of dichotomies, such as "war" versus "peace" or "peace" versus "justice" or, indeed, "peace negotiations" versus "military solution". However, the common dichotomies might also point towards a different issue that actors in contemporary peacemaking face. If the straightforward dichotomies are no longer applicable, it is a valuable exercise to look at the LRA conflict to ask if this is a conflict that is at all negotiable. Those in opposition to the LRA peace negotiations have often referred to the LRA as rebels without a cause, puzzled as to what exactly perpetuates the rebel situation. Such opposites are commonly used to describe what is essentially a permanently shifting and fluid situation involving many different actors. Moving away from these dichotomies and their often-harmful effect becomes essential when state-sponsored violence becomes the tool of choice to transform the situation from one extreme – war – to the other – peace.

What might be a more constructive way of thinking about the issue of justice and peace, moving away from the dichotomous framing, is a renewed debate on what accountability might mean in a complex, long-term and convoluted conflict in which international actors have also played a part and in which boundaries between victim and perpetrator are often blurred.[97] The dichotomous framing overlooks crucial structural points that individualised justice procedures fail to grasp. Joanna Quinn argues that

> civil war leaves in its path a series of communities in need of many things, all of which stretch budgets that have been depleted by years of significant military expenditure. These include roads, hospitals, education, and security, among others, and each of these must be carefully weighed against the country's need for justice.[98]

[97] Erin K. Baines, "Complex Political Perpetrators: Reflections on Dominic Ongwen", in *Journal of Modern African Studies*, 2009, vol. 47, no. 2, pp. 163–91.

[98] Joanna R. Quinn, "Constraints: The Un-Doing of the Ugandan Truth Commission", in *Human Rights Quarterly*, 2004, vol. 26, no. 2, p. 403.

This is a crucial consideration, since it makes clear that bringing justice does not bring peace to many of the victims of broader structural violence. Phil Clark argues that the framing of the war in northern Uganda is based on false dichotomies between peace and justice or, on a more refined level, between international and traditional justice. Instead of opposing the concepts, however, the question must be what form justice can take so that it can work alongside peace.[99] Why the notion of justice procedures is so complex is made clear by Bruce Baker, who argues that for victims of sexual violence committed by the LRA the lack of justice procedures from the government contributes to the same sense of marginalisation that created and fuelled the LRA rebellion in the first place.[100]

The notion of an international criminal justice framework as being in opposition to peace is not helpful. Rather than simply opposing peace and justice, it might be more appropriate to see the two seemingly opposite ends of the debate as an indication of individual accountability in a complex, contextualised structure. One suggestion of thawing the dichotomy of justice and peace is the inclusion of a more refined truth and reconciliation element that takes less of a template approach to the issue, but acts as a repository of memories and understandings of accountability.

The notion of creating memories and allowing official access to them that is as authoritative as, for example, arrest warrants of the ICC, is an intriguing one. It does not solve the tension between peace and justice, but opens another, possibly more fruitful avenue of dealing with what has happened. During the Juba talks the LRA/M wanted to change perceptions of the war, presenting themselves as truth-tellers about the conflict. They expected that a more complete picture of the war, including recognition of government atrocities, would mean that the LRA's actions would be exonerated. In an LRA/M communiqué this was phrased in the following way:

> For a long time LRA/M did not make its case to the international community, including the United Nations, regarding its political Agenda. This gave the repressive regime of NRM in Uganda a leeway to use its massive international propaganda machinery to vilify the LRA to make it appear like the most murderous, atrocious evil and terrorist Organi-

[99] Clark, 2010, see *supra* note 69.

[100] Bruce Baker, "Justice for Survivors of Sexual Violence in Kitgum, Uganda", in *Journal of Contemporary African Studies*, 2011, vol. 29, no. 3, pp. 245–62.

> sation in the world. No wonder the regime in Kampala has managed to convince some members of the international community to buy into this ploy and list the LRA/M as a terrorist organisation. It may be noteworthy that Uganda, notwithstanding the fact that its economy is 52% Donor funded, is one of the few African countries that has hired an international U.K. Public Relations firm at phenomenal costs to, not only cleanse its image, but also to fight her political opponents, both at home and abroad. In the same vein, it has relentlessly tried to enlist the support of the international community, including the UN and its agencies, to assist him to fight a civil war he has failed to win because of the inherent justifications underpinning those civil wars.[101]

Yet research has shown that truth-telling as a peacebuilding measure presupposes a significant shift in power to create an environment in which truth, or what people presume it to be, can be told without repercussions. Renée Jeffery highlights that there is still a disjuncture between the practice of political forgiveness and how it is understood in theory.[102] This has implications for how truth-telling might be experienced.

Further, telling the truth might also highlight what Ketty Anyeko *et al.* call the "complexity of the victim-perpetrator identity at the community level".[103] An emerging record of the full truth could also turn out to be threatening to peace. Such a record might highlight the disregard the LRA often showed for the very same population that they sought to free from oppression.[104]

6.5. Conclusion

Providing insight into how the ICC was understood by members of the LRA/M, this chapter has argued that the LRA perceived the ICC as perpetuating patterns of disenfranchisement and marginalisation that had brought about the armed conflict in the first place. The tension between

[101] LRA/M Delegation in Juba, "The Political Case of the LRA/M to the Department of Political Affairs, United Nations", Juba, 2006.

[102] Renée Jeffery, "Forgiveness, Amnesty and Justice: The Case of the Lord's Resistance Army in Northern Uganda", in *Cooperation and Conflict*, 2011, vol. 46, no. 1, 78–95.

[103] Ketty Anyeko, Erin Baines, Emon Komakech, Boniface Ojok, Lino Owor Ogora and Letha Victor, "'The Cooling of Hearts': Community Truth-Telling in Northern Uganda", in *Human Rights Review*, 2012, vol. 13, no. 1, pp. 107–24.

[104] Author notes first trip of LRA delegation to Juba, 2006

peace and justice is thus not necessarily found in the sequencing of the two, but in the negative perception of the way in which justice procedures are administered. This makes committing to peace so challenging.

Purists might argue that these considerations are meaningless as the ICC's mandate is clear and was not violated. However, as much writing on the ICC has shown, the ICC does act politically – pretending this not to be the case has detrimental effects, as the LRA case has shown. A broader lesson that can be drawn from the experience of LRA actors under ICC arrest warrants is that procedures need to be seen as just and fair by everyone affected. This has implications for communication strategies that international institutions might want to pursue, as well as for the framing in which international institutions, namely the ICC, present their activities.

Within the broader debates on peace and justice, the historic case of the LRA and the ICC highlights the tensions between presumed long-term and short-term effects of different approaches to peace and justice. It is unlikely that this broader tension can be resolved either through *ad hoc* or permanent international criminal justice institutions – or indeed through abandoning both justice approaches. Instead the tension highlights that the main characteristic of both peace and justice is that they require permanent processes that cannot be captured or their goals achieved through a signed agreement or a verdict. This is increasingly the case as conflicts continue to be ongoing – without clear beginnings or ends and even in many cases without clear warring parties, victims and perpetrators. The establishment of a permanent court to deal with situations of violent conflict might have misleadingly shrouded this characteristic of contemporary conflict, suggesting instead a clarity of procedure for peacemaking that does not exist.

FICHL Publication Series No. 23 (2015):

Historical Origins of International Criminal Law: Volume 4

Morten Bergsmo, CHEAH Wui Ling, SONG Tianying and YI Ping (editors)

This fourth volume in the series Historical Origins of International Criminal Law concentrates on institutional contributions to the development of international criminal law rather than taking a chronological (Volumes 1 and 2) or doctrinal (Volume 3) approach. It analyses contributions made by institutions such as the Nuremberg, Tokyo, ex-Yugoslavia and Rwanda tribunals, INTERPOL, the International Association of Penal Law, the Far Eastern and Pacific Sub-Commission, and internationalised fact-finding mandates. It considers the role played by some jurisdictional principles and work methods of international and national institutions. Part 4 also looks at wider trends in the development of international criminal law

The contributors include Wegger Christian Strømmen, LING Yan, Anuradha Bakshi, ZHU Wenqi, Volker Nerlich, David Re, LIU Daqun, Serge Brammertz, Kevin C. Hughes, Patricia Pinto Soares, Mareike Schomerus, Seta Makoto, Natalia M. Luterstein, Hilde Farthofer, Itai Apter, Md. Mostafa Hosain, Helge Brunborg, Mutoy Mubiala, Yaron Gottlieb, Mark A. Lewis, Marquise Lee Houle, Tina Dolgopol, Rahmat Mohamad, Barrie Sander, Furuya Shuichi, Chris Mahony, ZHANG Binxin and the editors.

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ISBN: 978-82-8348-017-7 (print) and 978-82-8348-016-0 (e-book).